

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7634 OF 2005

Santosh Dattatray Ratnaparkhe. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

....
Mr.R. K. Mendadkar with Ms.Helen K.Mandlik for the Petitioner.
Mr. C. R. Sonawane, AGP for the Respondents.

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**CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.
March 20, 2006.**

P.C. (Per Dr. D.Y. Chandrachud, J.) :

Rule, returnable forthwith by consent. By consent and at the request of Counsel, taken up for final disposal.

The Petitioner claims to belong to the Khatik community which is recognised as a Scheduled Caste under the Presidential Notification issued under Article 341(1) of the Constitution. On the basis of a caste certificate, the Petitioner applied for and was selected by the Third Respondent, the Mira-Bhayandar Municipal Corporation, on a post of a Gardner, reserved for the Scheduled Castes. However, before an order of appointment was issued, the Third Respondent referred the caste certificate to the Divisional Caste Certificate Scrutiny Committee for verification. The Committee invalidated the caste claim on 27th July 2004. The

Petitioner moved proceedings under Article 226 of the Constitution before this Court. By an order dated 30th August 2004, a Division Bench while taking note of the submission urged on behalf of the Petitioner that a Caste Validity Certificate had been issued to the Petitioner's father and to his two uncles, set aside the order of the Scrutiny Committee. This Court observed that there was nothing to indicate as to how the Committee had applied its mind to the earlier adjudication by a competent Caste Committee upholding the claim of the Petitioner's father and his two uncles to belong to the Khatik community. This Court noted that it was settled law that a member of one family cannot be held to belong to a different caste or tribe and since his father and uncles had been certified to belong to the Khatik community, the caste of the Petitioner could not be any different. The Petition was accordingly disposed of by remitting the proceedings back to the Scrutiny Committee for disposal in the light of the view taken by a Learned Single Judge of this Court in Writ Petition 6043 of 1999.

2. The Scrutiny Committee has now passed an order upon remand, on 30th August 2005 which has been questioned in these proceedings since the Committee invalidated the claim of the Petitioner once again. The Divisional Caste Certificate Scrutiny

Committee, Konkan Division, Navi Mumbai, has noted that it had summoned the record from its counterpart at Pune in regard to the Validity Certificate that had been issued to the Petitioner's father and uncles so as to enable the Committee to verify the documentary material on the basis of which those certificates which came to be issued. However, no such documents had been furnished. The Committee, however, noted that in the School Leaving Certificate of the Petitioner's father of 1968, his caste has been shown as Kalal; in the Service Book of the Petitioner's father of 1972, the caste of Maratha had been erased and had been replaced with the word 'Khatik' and that the death certificates of the Petitioner's grandfather and great grandfather showed the caste 'Dhangar'. In these circumstances, the caste claim came to be invalidated once again.

3. A perusal of the order passed by the Scrutiny Committee in the present case would show that the Committee considered itself to be seriously handicapped by the inaction of the Committee at Pune in forwarding to it the documents that were produced by the Petitioner's father and uncles for obtaining Caste Validity Certificates from the Scrutiny Committee at Pune. The Committee

proceeded to evaluate the material on the record and according to it, this material did not support the caste claim. The Committee, however, lost sight of the fact that the claim of the father of the Petitioner had been duly affirmed and has been duly validated. The Committee, however, as we have noted, was handicapped by the inaction of its counterpart at Pune in forwarding all the documents on the basis of which the caste claim of the Petitioner's father and uncles had been validated. In this state of the matter, we have suggested to Counsel for the Petitioner that it would be appropriate if the proceedings are remitted back to the Scrutiny Committee and if necessary directions are issued to the Committee at Pune which had granted the aforesaid Validity Certificates to forward all the relevant documents to the Second Respondent which is to consider the caste claim of the Petitioner. Counsel appearing on behalf of the Petitioner agreed to the suggestion. The Learned AGP has also no objection to the proceedings being disposed of accordingly.

4. In these circumstances, we dispose of this petition in the light of the following directions :

-(i) In order to facilitate a fresh determination by the Second Respondent of the caste claim of the Petitioner, the impugned order dated 5th August 2005 is quashed and set aside. The proceedings shall stand remitted back to the Second Respondent for fresh decision;

-(ii) The First Respondent is directed to ensure that the Caste Scrutiny Committee at Pune forwards to the Second Respondent all the documentary material on the basis of which a decision was taken to grant a Caste Validity Certificate to the Petitioner's father Dattatray Digambar Ratnaparakhe and uncles Chandrakant Digambar Ratnaparakhe and Sudhakar Digambar Ratnaparakhe. The Scrutiny Committee at Pune shall be directed to do so no later than four weeks from today;

-(iii) The Second Respondent shall decide upon the caste claim of the Petitioner after furnishing the Petitioner with an opportunity of being heard and having regard to the observations of this Court in the judgment dated 30th August 2004 in Writ Petition 6661 of 2004 (**Santosh Dattatray Ratnaparkhe vs. State of Maharashtra**);

-(iv) It is clarified without the expression of any opinion on the merits of the petition, that in the event that it is found that the Caste Validity Certificate that was issued to the Petitioner's father or to any other members of the family is founded on material that is not genuine or which is found to be false or fabricated, this shall not preclude the Competent Authority from taking steps in accordance with law after due notice to the parties concerned. For this purpose, it would be open to the Second Respondent to forward all the material which it may have gathered during the course of the vigilance enquiry to the Competent Committee;

-(v) We clarify that we have not expressed any opinion on the merits of the caste claim of the Petitioner or for that matter, in regard to the Validity Certificate issued to the Petitioner's father or uncles.

5. The Petition is disposed of on the aforesaid terms. No order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.